



REPUBLIC OF KENYA
EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI
CAUSE NO. 1207 OF 2010
(Before Hon. Lady Justice Hellen S. Wasilwa on 24th January, 2017)
SHEM OPIYO OGANGO.....CLAIMANT
VERSUS
SHIVA CARRIERS LIMITED.....RESPONDENT

RULING

1. The Application before Court is the one dated 18.9.2015. The Application was filed under Rule 32 of the Industrial Court (Procedure) Rules 2010 and Section 12(3) of the Industrial Court Act 2011.
2. The Applicants herein seeks order for review of this Court's Ruling dated 22.9.2014 which allowed the Respondent's Application dated 4th August 2014. The Applicant moved this Court for review of the said Ruling on the grounds that:
 - a. *..”There is a mistake or error apparent on the face of the record.*
 - b. *There are sufficient reasons to review the said Rulings/orders.*
3. The Applicant avers that his Counsel Odhiambo Advocate instructed Mr. Rakoro Advocate to hold his brief on 22nd September 2014 and his instruction was that the Application be disposed of by way of written submissions if the Court would allow.
4. Mr. Rakoro Advocate informed Odhiambo Advocate that the Application was not listed for hearing on 22.9.2014 and he annexed SOE.1 copies of the Cause List for that day and Rakoro's Affidavit.
5. Odhiambo Advocate then instructed Nelson Othoo a Court Clerk in the firm of Rakoro & Company Advocates to fix the matter for hearing. Nelson made several efforts to trace the file in order to fix a hearing date but in vain. Odhiambo Advocate even wrote to the Deputy Registrar to give them a hearing date for the said Application (SOE.2).
6. It was not until sometime in early August 2015 that the said Mr. Othoo managed to trace the file and realized that the Application was heard on 22.9.2014.
7. The Claimant contends that none attendance of his Advocate on 22.9.2014 was therefore not intentional. The Claimant now wants this Court to review and set aside proceedings and ruling of

22.9.2014 and the Respondent's Application dated on 4.8.2014 be heard denovo.

8. The Respondents filed their replying affidavit dated 4.8.2016. They argue that they filed their Application dated 5.8.2014 on 4.8.2014 under Certificate of Urgency. J. Onyango issued an order on 6.8.2014 directing that the Application be heard interpartes on 22.9.2014.

9. This order was served upon the Claimants to appear before J. Onyango on 2.9.2014.

10. The Respondent contends that the Court proceeded on 22.9.2014 noting that the Application was unopposed. They also aver that the review Application was filed on 1.10.2015 over a year since Court allowed the Application and there is inordinate delay in bringing the said Application.

11. They contend that this Application is meant to antagonize the Respondent who has settled the decretal sum in full. They state they paid the Claimant 793,303/= in total settlement of the claim and there is no issue for determination. They want this Application dismissed.

12. Having heard both parties, I note from the record that on the date this Application was set for hearing on 22.9.2014, the Application was not listed for hearing. This is as per the Cause List annexed to this Application.

13. For that reason the order given on 22.9.2014 allowing the Application in terms of prayer 3, 4, & 5 is hereby reversed and set aside.

14. The Application may be set down for hearing interpartes.

Read in open Court this 24th day of January, 2017.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Miss Kageni for Respondent – Present

Mr. Odhiambo for Claimant – Present